

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1334 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SURESH B DAVE

Versus

UNION OF INDIA

Appearance:

MR PV NANAVATI for Petitioner
MR MR Shah for Respondent No. 1
MR SR SHAH for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 21/07/2000

ORAL JUDGEMENT

1. Appellant-original plaintiff, by filing this appeal, has challenged judgment and decree dated April 25, 1980, passed by learned Judge, Court No.9, City Civil Court, Ahmedabad, in Civil Suit No.2118 of 1978.

2. The appellant had filed the abovenumbered suit for a declaration that the order dated June 5, 1978 passed by respondent No.2 withholding increment and for recovery of Rs.4680/- and the order dated June 16, 1978 passed by respondent No.2 treating his suspension as period of non-duty as illegal, mala fide, arbitrary and void and not binding to him and also prayed for perpetual injunction restraining the respondents from enforcing or executing the said orders.

3. The appellant was serving as clerk in Post & Telegraphs Department in different post offices at Ahmedabad. It was reported that there was shortage of 'philatelic stamps to the extent of Rs.18000 when the appellant was in-charge of 'philatelic stamps' in Railwaypura Post Office at the relevant time. He was suspended by order dated March 29, 1977. First information report was lodged by the postal department to the concerned police station and, ultimately, on completion of investigation, the learned Metropolitan Magistrate ordered release of the appellant under Section 169 of the Code of Criminal Procedure by his order dated January 25, 1978. Consequently, order of suspension passed against the appellant came to be revoked on January 31, 1978. Respondent No.2 made an order on June 16, 1978, that the appellant be treated as not on duty for suspension period from 21.3.1977 to 31.1.1978. The respondent No.2 also passed an order on June 5, 1978 withholding two increments of the appellant and for recovery of Rs.4680/- which was challenged in the above-numbered suit.

4. The suit was resisted by the respondents by filing their joint written statement at Exh.8, inter alia, denying the averments made in the plaint. It was stated that the appellant was negligent in discharge of his duties as 'stamp vendor' because he had not filled the entries in the stamp register from 3.2.1977 to 8.2.1977. It was averred that total loss to the Department was Rs.18,000/- and odd and, therefore, the appellant was punished with recovery of Rs.4680/- and treated his suspension period as not on duty. It was further averred that only a show cause notice was issued against the appellant that as to why he should not be treated as not on duty for the period on which he remained under suspension. It was further averred that no suit was maintainable against the show cause notice issued against the appellant and, therefore, the suit be dismissed with costs.

5. On rival assertion of the parties, the trial court framed relevant issues at Exh.9. After appreciating oral as well as documentary evidence, the trial court concluded that the appellant had failed to prove that the orders dated June 5, 1978 addressed by respondent No.2, withholding increment and for recovery of Rs.4680/- was illegal, unlawful, arbitrary and void. The trial court observed that, in view of purshis Exh.43 filed by the advocate for the appellant that no action was taken pursuant to the show cause notice dated June 16, 1978 for showing the cause as to why the period of suspension should not be treated as not on duty, the issue with regard to challenge to the said show cause

notice does not survive. The trial court further concluded that the enquiry, which was held against the appellant, was in accordance with the procedure as laid down in the relevant Rules and there was no illegality in holding the said enquiry, wherein, two increments have been earned by the appellant and recovery of Rs.4680/- was passed at the conclusion of enquiry held by respondent No.2, as per the CCS Rules (Conduct) Rules, 1964. On the basis of above referred to conclusion, the trial court dismissed the suit filed by the appellant by judgment and decree dated April 25, 1980, which has given rise to filing of this appeal.

6. Learned counsel for the appellant and the respondents have taken through the entire record and proceedings. Learned counsel for the appellant has urged that the order of withholding two increments and recovery of Rs.4680/- from the appellant is illegal and arbitrary because enquiry, which was conducted against the appellant, was against the relevant rules prescribed by the Central Government.

7. The contention raised by learned counsel for the appellant is devoid of any merit and deserves to be rejected. The trial court had considered all the relevant facts and circumstances, under which, the impugned order of withholding two increments and recovery of Rs.4680/- was passed against the appellant. It is not pointed out by learned advocate for the appellant how enquiry conducted against the appellant was against the 'Conduct Rules' as framed by the Central Government. No illegality has been pointed out by learned counsel for the appellants to dislodge the findings recorded by the trial court. In my opinion, the trial court had correctly appreciated oral as well as documentary evidence adduced by the parties at the trial. I do not find any infirmity in the judgment and decree passed by the trial court and, therefore, the appeal deserves to be dismissed.

8. As a result of foregoing discussion, the appeal is dismissed with no order as to costs.

(swamy)